

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF KENTUCKY UTILITIES)	
COMPANY'S AND LOUISVILLE GAS & ELECTRIC)	
COMPANY'S RESPECTIVE NEED FOR AND)	CASE NO.
COST OF MULTIPHASE LANDFILLS AT THE)	2015-00194
TRIMBLE COUNTY AND GHENT GENERATING)	
STATIONS)	

ORDER

On July 16, 2015, Kentucky Utilities Company and Louisville Gas & Electric Company (jointly, "Companies") filed a joint petition, pursuant to KRS 61.878(1)(c) and 807 KAR 5:001, Section 13, requesting that the Commission grant confidential protection to the Companies' responses to Sterling Venture, LLC's ("Sterling Ventures") First Data Request for Information ("Sterling Ventures' Initial Request"), Item 17.d. Subsequently, on July 17, 2015, the Companies filed an amended joint petition requesting the Commission grant confidential protection to the Companies' responses to Sterling Ventures' Initial Request, Item 14, as well as Item 17.d. Thereafter, on August 12, 2015, the Companies tendered a letter filing the Companies' supplemental response to Sterling Ventures' Initial Request, Item 14, subject to the Companies' pending amended joint petition filed on July 17, 2015. By letter filed on September 24, 2015, the Companies requested confidential protection for their joint responses to information requested by Commission Staff at the hearing in this matter ("Staff's Post-Hearing Data Request"), Items 7 and 8, which include confidential material drawn from the Companies' response and supplemental response to Sterling Ventures' Initial

Request, Item 14, that is subject to the July 16, 2015, and July 17, 2015 joint petitions for confidential treatment.

The Companies' responses to Sterling Ventures' Initial Request, Item 17.d., consists of an Excel file containing proprietary market data and financial information prepared to evaluate Sterling Ventures' 2011 proposal to store gypsum from Ghent Generating Station. The Companies request confidential protection for this material for a period of five years.

The Companies' response to Sterling Ventures' Initial Request, Item 14, consists of a thumb drive containing financial information used in connection with the projected cost and revenue requirement impact of the Trimble County Generating Station Landfill ("Trimble County Landfill"). The Companies request confidential protection for this material for a period of ten years. The Companies' supplemental response to Sterling Ventures' Initial Request, Item 14, includes two additional Excel files that are subject to the July 17, 2015 amended joint petition. The first Excel file contains the Companies' May 2015 present value revenue requirement ("PVR") analysis that evaluated whether to build the Trimble County Landfill or retire and replace the Trimble County Generating Station coal-fired unit. The second Excel file contains detailed cost information to assess beneficial reuse vendor pricing and bidding for the purpose of determining least cost bids. Both Excel files contain information that is identical to the Companies' response to Staff's Initial Request, Item 18, which is subject to a pending joint petition for confidential treatment filed July 16, 2015. The Companies' response to Staff's Post-Hearing Request, Items 7 and 8, include tables and values reproduced directly from the Companies' response and supplemental response to Sterling Ventures' Initial Request,

Item 14. The Companies request confidential treatment for their response and supplemental to Sterling Ventures' Initial Request, Item 14, and their response to Staff's Post-Hearing Request, Items 7 and 8, for a period of ten years.

In support of their joint petition, the Companies state that public disclosure of the designated information would likely permit an unfair commercial advantage to the Companies' competitors, and thus is generally recognized as confidential and exempt from public disclosure pursuant to KRS 61.878(1)(c). The Companies assert that public disclosure of proprietary market data and financial information contained in their responses to Sterling Ventures' Initial Request, Items 14 and 17.d., their supplemental response to Sterling Ventures' Initial Request, Item 14, and their response to Staff's Post-Hearing Request, Items 7 and 8, would impede the Companies' ability to procure the best contract terms in negotiations with other entities and would jeopardize the Companies' ability to procure least cost pricing.

Sterling Ventures filed a response on September 8, 2015, objecting to, *inter alia*, the Companies' request for confidential treatment for the responses to Sterling Ventures' Initial Request, Items 14 and 17.d., and the supplemental responses to Sterling Ventures' Initial Request, Item 14. Sterling Ventures did not set forth the basis for its objection to the Companies' request for confidential treatment for the response to Sterling Ventures' Initial Request, Item 17.d.

As a basis for objecting to confidential treatment for the Companies' response and supplemental response to Sterling Ventures' Initial Request, Item 14, Sterling Ventures argues that the Companies publicly disclosed, and thus have waived confidential treatment for, certain information contained in this response. Sterling

Ventures asserts that the Companies publicly disclosed the same or similar cost projections for PVRR calculations in tables filed in connection with previous applications¹ to the Commission, and in the Companies' 2014 application to the U.S. Army Corps of Engineers for a Clean Water Act Section 404 Permit. Citing 807 KAR 5:001, Section 13, Sterling Ventures argues that information that is publicly available does not qualify for confidential protection under 807 KAR 5:001, Section 13(10).

In their reply, the Companies reiterate that the designated information is entitled to confidential treatment under KRS 61.878 and 807 KAR 5:001, Section 13. As an initial matter, the Companies argue that Sterling Ventures' response is untimely as 807 KAR 5:001, Section 13(2)(d), permits a party to file its response within seven days after a petition for confidential treatment is filed, but Sterling Ventures' response was not filed until 48 days after the Companies filed their petition.

The Companies assert that the information contained in their response and supplemental response to Sterling Ventures' Initial Request, Item 14, has not been publicly disclosed elsewhere. The Companies state that the highly detailed cost information consisting of 457 pages contained in their response to Sterling Ventures' Initial Request, Item 14, is not the same or substantially similar to the tables cited by Sterling Ventures, which provide a much lower level of detail consisting of 29 pages. The Companies further assert that the cost information contained in the Companies' response and supplemental response was derived directly from commercially-sensitive vendor information. Because the confidential vendor information could be readily

¹ See Case No. 2009-00197, *Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan for Recovery by Environmental Surcharge* (Ky. PSC Dec. 23, 2009); and Case No. 2009-00198, *Application of Louisville Gas and Electric Company for a Certificate of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan for Recovery by Environmental Surcharge* (Ky. PSC Dec. 23, 2009).

calculated using the remaining inputs and publicly disclosed results, excising the confidential information would not ensure that the information remain confidential.

Having carefully considered the petition and the materials at issue, the Commission finds that the designated materials contained in the Companies' responses to Sterling Ventures' Initial Request, Items 14 and 17.d., the Companies' supplemental response to Sterling Ventures' Initial Request, Item 14, and the Companies' response to Staff's Post-Hearing Request, Items 7 and 8, are records that are generally recognized as confidential or proprietary, and which, if openly disclosed, would permit an unfair commercial advantage to competitors, and therefore meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. The Companies' motion for confidential protection for their responses to Sterling Ventures' Initial Request, Items 14 and 17.d., their supplemental response to Sterling Ventures' Initial Request, Item 14, and their response to Staff's Post-Hearing Request, Items 7 and 8, are granted.

2. The materials set forth in the Companies' response to Sterling Ventures' Initial Request, Item 17.d., shall not be placed in the public record or made available for public inspection for a period of five years, or until further Orders of this Commission.

3. The materials set forth in the Companies' response to Sterling Ventures' Initial Request, Item 14, the Companies' supplemental response to Sterling Ventures' Initial Request, Item 14, and the Companies' response to Staff's Post-Hearing Request,

Items 7 and 8, shall not be placed in the public record or made available for public inspection for a period of ten years, or until further Orders of this Commission.

4. Use of the materials in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

5. The Companies shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.

6. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, then the Companies shall have 20 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If the Companies are unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

7. The Commission shall not make the requested materials available for inspection for 20 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow the Companies to seek a remedy afforded by law.

By the Commission

ENTERED
JAN 27 2016
KENTUCKY PUBLIC SERVICE COMMISSION

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